**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 3839 of 2004**
**With**
**CIVIL APPLICATION No. 5773 of 2006**

**For Approval and Signature:**

**HONOURABLE MR. JUSTICE B.J.SHETHNA**
**HONOURABLE MR.JUSTICE MD SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**RJARAMSINGH TOMAR - Petitioner(s)**
**Versus**
**UNION OF INDIA & 4 - Respondent(s)**

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**Appearance :**
MR MS RAO for Petitioner(s) : 1,
MR SHAKEEL A QURESHI for Respondent(s) : 1 - 5.
RULE SERVED for Respondent(s) : 3 - 4.

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**CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA**

**and**

**HONOURABLE MR.JUSTICE MD SHAH**

**Date : 14/09/2006**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)**

The petitioner – Rajaram Singh Tomar, Constable, CISF, removed from service, has filed this petition under Article 226 of the Constitution and challenged the impugned order dated 17/18.6.2002 (Annexure:D) passed by the Disciplinary Authority and the impugned order dated 22.8.2002 (Annexure:E) passed by the Appellate Authority, dismissing his Appeal against the order of removal (Annexure:D).

Before approaching this Court by way of this writ petition, in February, 2004 the petitioner had approached the High Court of Madhya Pradesh at Gwaliar Bench, by way of Writ Petition No.1130 of 2003, which was dismissed by the learned Single Judge of Madhya Pradesh High Court, by his Order dated 30.4.2003 only on the ground of jurisdiction, without going into the merits of the case. Thereafter, as stated earlier, the petitioner has approached this Court after a period of almost 10 months by way of this writ petition in February, 2004 and challenged both, the impugned orders at Annexure:D & E, passed on 17/18.6.2002 and 22.8.2002, respectively.

Thus, assuming for the sake of arguments that the petitioner has under some wrong advise filed petition before the Gwaliar Bench of MP High Court at Jabalpur, then also there is a gross delay of nearly 10 months. His writ petition was dismissed on 30.4.2003 whereas he approached this Court by way of this petition only in February, 2004. There is no explanation whatsoever offered by the petitioner for

approaching this Court after such a gross delay. However, it was tried to be submitted by Shri Rao for the petitioner that once the petition was admitted by the Division Bench of this Court by issuing Rule on it on 21.6.2004 then the petition should not be dismissed on the ground of delay and latches. It is true that the Division Bench of this Court had admitted the matter on 21.6.2004, but before its admission no notice was issued to the other side. If after issuing the Notice and hearing the other side the matter was admitted, perhaps this Court would have taken a different view of the matter. But, once the petition was straight-way admitted then certainly at the time of final hearing stage the Court can always consider the objection of gross delay and latches raised by the other side.

This petition is also required to be dismissed on the ground of suppression of material fact. It may be stated that only in 2006 the petitioner has filed the above Civil Application No.5773 of 2006 in this writ petition seeking amendment to the petition on the ground that before approaching this Court he had filed Revision against the impugned orders of removal passed by the Disciplinary Authority and the impugned order of dismissal of his Appeal by the Appellate Authority and the said Revision was dismissed by the Revisional Authority by its order dated 3.4.2003 which was received by the petitioner only on 24.4.2003. However, learned Advocate (Shri Nikhil Kariel), who had earlier filed the main petition before this Court in February, 2004, did not

challenge the legality and validity of the revisional orders dated 3.4.2003. Therefore, amendment be granted and he may be allowed to challenge the order of the Revisional Authority also in the main petition.

In view of serious allegations made on oath by the applicant in this Application, we had called Shri Nikhil Kariel, who had earlier filed writ petition. He has clearly stated that when he filed petition, on behalf of the present petitioner, that time he was entrusted with the papers consisting of Orders of Disciplinary Authority, Appellate Authority and the order of M.P.High Court, but the order passed by the revisional Authority on 3.4.2003 was never given to him by the petitioner. He submitted that after the petition was admitted on 21.6.2004 by the Division Bench of this Court the petitioner had taken away the papers of main petition from him long back and, therefore, he has engaged Advocate Shri Rao.

Shri Rao, learned Counsel for the petitioner submitted that he has made the aforesaid averments in Para : 3 of the Civil Application on the instruction received from the petitioner. However, he conceded that the order of revisional Authority passed on 3.4.2003 was in fact received by the petitioner on 24.4.2003, prior to the order of rejection of his writ petition on 30.4.2003 by the M.P. High Court.

The petitioner in his writ petition No.1130 of 2003 filed before the M.P.High Court also challenged the orders passed by the Disciplinary Authority as well as the Appellate Authority but not the

Revisional Authority. He had also not stated in his writ petition about filing of revision. The order passed by the Revisional Authority on 3.4.2003 which was received by him on 24.4.2003, before the dismissal of his writ petition No.1130 of 2003 by the M.P.High Court. Thus, he had suppressed the fact of filing Revision Application against the order of Disciplinary Authority and the order of the Appellate Authority before the M.P. High Court in writ petition.

It appears that when he realized that if this fact of his revision Application dismissed by the revisional Authority is pointed out by the other side then his petition be dismissed, therefore, in 2006 he filed above Civil Application seeking production of order passed by the revisional authority by amending the writ petition. Therefore, on peculiar facts and circumstances of the case prayer for amending the relief made in that Civil Application has to be rejected because he has not come with clean hands.

From what has been stated above, it is clear that this petition suffers from vice of suppression of material fact. A categorical statement was made by the petitioner in this writ petition that he has not availed any alternative efficacious remedy by challenging the impugned orders passed by the Disciplinary Authority as well as Appellate Authority, except filing the writ petition before the M.P. High Court, which was dismissed by the M.P. High Court, Gwaliar Bench, but in fact he had filed revision against those orders. Therefore, only on

the ground of suppression of material fact without going into the merits of the case this petition is required to be dismissed.

Before parting we may state that the petitioner was seeking discretionary relief from this Court in its extra-ordinary jurisdiction under Article 226 of the Constitution. Law on this point is very well settled by the Hon'ble Apex Court that only those persons who come with clean hands will get such discretionary relief from this Court and not those who do not come with clean hands.

In view of the above, without going into the merits of the case both, this petition as well as Civil Application, are dismissed. We would have saddled the petitioner with heavy cost for filing such petition, but Shri Rao for the petitioner stated he was poor constable and his family is hand to mouth, therefore, we have refrained ourselves from awarding heavy cost. Accordingly, this petition is dismissed with no order as to costs.

Civil Application No.5773 of 2006 is also dismissed for the reasons stated herein above.

(B.J.SHETHNA,J.)

(M. D. SHAH, J.)

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